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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL ROBERT MAREZ,

Defendant and Appellant.

F077367

(Super. Ct. Nos. F17907499,
F18900016)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Glenda S. Allen-Hill, Judge.

Rex Adam Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Smith, J. and DeSantos, J.

Appointed counsel for defendant Daniel Robert Marez asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Finding no arguable error that would result in a disposition more favorable to defendant, we affirm.

BACKGROUND

On November 6, 2017, while defendant's ex-girlfriend was driving two of their children to school, defendant rammed his car into her car. Defendant stopped and demanded money from her. She threw money from her window and drove away.

On December 24 and 25, 2017, defendant left threatening messages on his ex-girlfriend's telephone. The ex-girlfriend believed defendant would kill her. He was arrested the next day.

On February 5, 2018, defendant pled no contest to making a criminal threat (Pen. Code, § 422),¹ in return for a stipulated 16-month term. He also pled no contest to felony vandalism (§ 594, subd. (b)(1)), in return for a 16-month concurrent term.²

On March 7, 2018, the trial court sentenced defendant as agreed. The court also granted custody credits and imposed various fines and fees.

On April 16, 2018, defendant filed notices of appeal. The trial court granted his requests for certificates of probable cause, which claimed his pleas were invalid because he was under the influence of methamphetamine at the time of his pleas.

DISCUSSION

Defendant's claim of the invalidity of his pleas invokes a claim of ineffective assistance of counsel for failing to raise a motion to withdraw his pleas, based on the

¹ All statutory references are to the Penal Code.

² The pleas involved two different cases, F18900016 and F17907499, respectively.

ground that his pleas were not knowingly and intelligently made because he was under the influence at the time he entered into the pleas.

To prove ineffective assistance of counsel, a defendant needs to show (1) counsel's representation fell below an objective standard of reasonableness under prevailing professional norms and (2) counsel's deficient performance was prejudicial. (*Strickland v. Washington* (1984) 466 U.S. 668, 687–688; *People v. Ledesma* (1987) 43 Cal.3d 171, 216–217.) To succeed on a motion to withdraw his pleas, a defendant has the “burden to produce evidence of good cause by clear and convincing evidence.” (*People v. Wharton* (1991) 53 Cal.3d 522, 585; § 1018.) “ ‘ “Good cause” means mistake, ignorance, fraud, duress or any other factor that overcomes the exercise of free judgment and must be shown by clear and convincing evidence.’ ” (*People v. Dillard* (2017) 8 Cal.App.5th 657, 665.) “Although criminal defendants are entitled to competent representation in the presentation of a motion to withdraw a plea, appointed counsel may properly decline to bring a meritless motion.” (*People v. Brown* (2009) 175 Cal.App.4th 1469, 1472.)

In claims of ineffective assistance of counsel, our review is limited to the appellate record, and we presume defense counsel acted within the wide range of reasonable professional assistance when making a tactical decision. (See *People v. Mai* (2013) 57 Cal.4th 986, 1009.) Because rebutting this presumption typically requires evidence outside the record, claims of ineffective assistance of counsel generally are raised in habeas corpus proceedings, a process that allows for an evidentiary hearing. (*People v. Carrasco* (2014) 59 Cal.4th 924, 980–981.) Consequently, appellate courts commonly decline to decide an ineffective assistance of counsel claim. If, however, a defendant possesses or can obtain evidence that is not in the appellate record, he or she may present the claim by way of a petition for writ of habeas corpus. (See *People v. Williams* (2013) 56 Cal.4th 630, 691 [some ineffective assistance claims “can be fully addressed only in a habeas corpus petition because they require investigation of evidence outside the record

in order to potentially establish prejudice”]; *People v. Barella* (1999) 20 Cal.4th 261, 272 [defendant’s claim of ineffective assistance of counsel should be resolved in a habeas corpus proceeding rather than on appeal].)

Here, we have reviewed the entire record and find no evidence to suggest that defendant did not knowingly and intelligently enter his no contest pleas. The plea forms he signed declare that he understood everything he initialed on the forms. He verbally confirmed to the trial court that he understood the rights and other information explained on the forms, and he verbally confirmed he understood the many rights mentioned by the court that he was giving up. As a result, the court stated it found defendant freely and voluntarily entered his pleas; understood the nature and consequences of the pleas; and expressly, knowingly, understandably, and intelligently waived his constitutional rights. In sum, we see no evidence to establish good cause, or to even suggest defendant was under the influence of any substance at the plea hearing or that his exercise of free judgment was overcome by any factor. Thus, we cannot conclude defense counsel was unreasonable in deciding not to raise a meritless motion to withdraw the pleas on this ground. As explained above, defendant may proceed by way of a petition for writ of habeas corpus if he possesses evidence outside the record to support his claim.

Having undertaken an examination of the entire record, we find no evidence of ineffective assistance of counsel or any other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.